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FEDERAL COMMUNICATIONS COMMISSION

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In Re Applications of:)	WT DOCKET No.:	96-41
)		
LIBERTY CABLE CO., INC.)	File Nos:	
For Private Operational Fixed)	708777	WNTT370
Microwave Service Authorization)	)	708778, 713296	WNTM210
and Modifications	)	708779	WNTM385
	)	708780	WNTT555
New York, New York	)	708781, 709426,	WNTM212
	)	711937	WNTM212
	)	709332	(NEW)
)	712203	WNTW782
)	712218	WNTY584
)	712219	WNTY605
)	713295	WNTX889
)	713300	(NEW)
)	717325	(NEW)
)		

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Date: May 15, 1996

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

COMMISSION
SECRETARY

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Suite 201
FCC Building
2000 L Street, N.W.
Washington, D.C.

Wednesday,
May 15, 1996

The parties met, pursuant to the notice of the
Judge, at 1:35 p.m.

BEFORE: HON. RICHARD L. SIPPEL
Administrative Law Judge

APPEARANCES:

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DIRE

(None)

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(None)

Hearing Began: 1:35 p.m.

Hearing Ended: 3:43 p.m.

P R O C E E D I N G S

JUDGE SIPPEL: Let us go right on the record.

This is a second prehearing conference in the Liberty Cable Company case.

Let me ask counsel, have all counsel identified themselves to the reporter, and does the reporter all have your names?

MR. SPITZER: We just indicated who we were, Your Honor.

JUDGE SIPPEL: Okay. Well, before you leave be sure that he gets your full names. I am not going to take the time to go all around the table. I have a good familiarity. We have done business before, so I think we can move forward right into this.

You certainly have been working very hard in terms of complying or trying to comply with the schedule that I have set after our last meeting. I am very concerned and I am particularly concerned about what I perceive as some of the unnecessary delaying and failure to respond to some of the discovery requests. I am particularly concerned about Liberty's responses to interrogatories.

There has been two or three go-arounds on these. I am not going to go down into detail on this. I just wanted to let you know where I am coming from in talking about these today.

1 But really, the purpose for those interrogatories,
2 and in some defense of Liberty, I think some of the
3 questions might be not what I had anticipated. But
4 nonetheless, the whole idea is to give names and job
5 positions and responsibilities in response to the questions,
6 when the question is who are these people, or who were the
7 people that did this. And what they got back was a list of
8 names. And names without identification, it may technically
9 be responsive to what has been asked, or how it has been
10 asked, or how artfully it has been asked. But these people
11 and these people -- I'm sorry -- counsel for Time Warner and
12 counsel for the Bureau need to know who these people, who
13 these people are by name and by job title and by function so
14 that they can discriminately set these depositions down.

15 MR. SPITZER: Your Honor?

16 JUDGE SIPPEL: Yes.

17 MR. SPITZER: Your Honor, we haven't had the
18 pleasure. My name is Eliot Spitzer of Constantine &
19 Partners, co-counsel with Mr. Pettit, of Wiley Rein, and Mr.
20 Begleiter.

21 I would like to respond first to a factual issue,
22 which is in the status report this morning, which is very
23 troublesome. And then if I could just take a moment to
24 respond to your concern, which we understand and appreciate,
25 and we think we have been fully responsive to, but we have

1 been working with the Commission diligently, but I will get
2 to that in just one moment, please.

3 Paragraph five, Your Honor, of --

4 JUDGE SIPPEL: What is this now?

5 MR. SPITZER: Of the Commission's status report
6 that we received moments before coming over here.

7 JUDGE SIPPEL: Yes. Well, I am familiar with the
8 status reports. I just have to turn to which part.

9 MR. SPITZER: Right. It's the Wireless
10 Telecommunications Bureau's report, paragraph five, at page
11 four.

12 JUDGE SIPPEL: I'm with you.

13 MR. SPITZER: It represents, in my view, entirely
14 misrepresents our compliance with the document production to
15 the Commission.

16 We provided on the 16th the entirety of the
17 document production to the FCC with an absolute oral
18 understanding, documented in a cover letter, saying look at
19 these documents. They are for your eyes only. We don't
20 have a confidentiality agreement. We have produced a
21 massive set of documentation, but on our personal
22 understanding that you will maintain their confidentiality,
23 go ahead and investigate because we, Liberty, wish to
24 maintain -- work on a schedule that Your Honor has set.

25 We documented that understanding in a cover

1 letter. The FCC looked at those documents over the next two
2 weeks. That has been confirmed to me by Mr. Weber.

3 This document represents that they kept those
4 documents in a box until the 29th. That is simply not the
5 case, Your Honor. We provided these documents to the
6 Commission, explaining to them we hadn't had time to stamp
7 those that were confidential and segregate confidential from
8 nonconfidential. But we said we don't want to take the time
9 to do that. We wish to proceed expeditiously. Here they
10 are. Just keep them confidential. Look at them so you know
11 who you want to depose.

12 And they did that. They began to look at
13 documents. This paragraph misstates the facts, Your Honor,
14 and it's just very troublesome to me because it suggests
15 that for two weeks we were malingering, not producing to the
16 Commission the documents that were the foundation for their
17 determination about who to approach.

18 JUDGE SIPPEL: Well --

19 MR. SPITZER: And I know this seems petty, but it
20 is just so troublesome because there is a two-week period in
21 which we said over and over again please notice your
22 depositions. We are ready. We wish to meet the schedule
23 that Your Honor has set. And it simply misstates. And Mr.
24 Weber, just before, outside, confirmed that they looked at
25 documents before the 29th. And this document here states

1 that they did no such thing.

2 JUDGE SIPPEL: Well, I wasn't looking for this
3 much of diversion.

4 I'll ask Mr. Weber if he can briefly respond.

5 MR. WEBER: Yes, Your Honor, I do have a response.

6 First of all, we did not receive the entirety of
7 the documents on the 16th. There were about 1500 pages
8 missing. Now, I realize that may be petty. But if we are
9 trying to get to misstatements on the record, that would
10 also be a misstatement.

11 It is true we did receive all the documents save
12 about 1500 of them on the 16th. We did begin a preliminary
13 review of those documents. Shortly thereafter we received a
14 call from Constantine & Partners informing us that they had
15 not stamped any of these documents confidential.

16 It was our understanding after that conversation
17 to cease review of these documents until they sent us a new
18 set on which pages they wanted to be held confidential, the
19 staff confidential. And that we now have two complete sets
20 of documents; one of which were the unstamped one still in
21 the boxes, and then the second sent which is what we have
22 been basing our review upon.

23 MR. SPITZER: Your Honor, I know this is a
24 diversion. It's simply not the case. The cover letter
25 which I have before me, we just had a messenger bring it

1 over, states clearly these documents are being produced
2 before the entry of a confidentiality order. Documents will
3 be disclosed and reviewed exclusively by the attorneys, this
4 lays out the understanding. But this is a side light, and I
5 appreciate that fact, Your Honor.

6 JUDGE SIPPEL: I have heard both sides on this
7 now. Let's look at this as the beginning of a brand new
8 day.

9 MR. SPITZER: Your Honor?

10 JUDGE SIPPEL: Let's put that aside.

11 MR. SPITZER: We will do that.

12 JUDGE SIPPEL: Now, I have got a checklist here of
13 things that I want to cover, and it's a pretty long list.
14 And the attorneys in this case have been doing more than
15 just a significant amount of work. I mean, there has been
16 an incredible amount of work done since our last meeting.

17 How much has been productive in terms of from
18 where I am sitting I am not going to get into that. But
19 it's been -- I know wherein your interests lie, and I know
20 of -- I have a good idea, I think, in terms of what you are
21 trying to accomplish.

22 In terms of Liberty, Liberty has got the burden of
23 proceeding, and Liberty has got the burden of proof, and
24 Liberty has got a heck of a lot at stake.

25 And Liberty says they don't want to take any

1 depositions, and Liberty says that they want to go forward
2 with this trial schedule as I have set it based on what all
3 the parties gave to me.

4 So that's the context in which I want to start
5 this conference. So if Liberty is basically set to go, what
6 is going to -- what is holding things up?

7 What is holding things up are, the first thing
8 was, well, what was told to me at the last conference, okay,
9 that when I came back from hearing a case in South Carolina
10 on the 4th of April I would probably have a protective order
11 on my desk waiting for me.

12 Well, the protective order came in this morning,
13 and it has not been the easiest thing to read between this
14 morning and now, but I have read it. And it tells me that
15 there has been a lot of work that has been done on it, but,
16 you know, what happened to the 30 days prior to that. It's
17 a very, very good document. It's very comprehensive. And I
18 am ready to go with it. I have got a few things I want to
19 say about it, but I am basically ready to go with it.

20 But these are the kind of things that are holding
21 this up. And, you know, this is -- in the scheme of things,
22 this is really no big deal, but it is holding things up.

23 What else is holding things up, as I said to
24 Liberty when I started here, when you answer questions to
25 interrogatories, give a full answer.

1 MR. SPITZER: Your Honor, I did not respond to
2 that before and Mr. Begleiter I am sure wants to supplement.

3 We had innumerable phone conversations with the
4 Commission in which we gave them descriptions of what
5 individuals did. We were forthright. We believed that we
6 were developing a reasonable working relationship with our
7 adversaries across the room up through and up until the
8 Friday before they filed their motion to compel. We were
9 describing individuals.

10 This is an agency that knows Liberty for better or
11 for worse, knows who the individuals are. It's a small
12 company. Time Warner has been taking depositions for
13 innumerable litigations of the individuals at Liberty. Both
14 the Commission, the Bureau, and Time Warner know who the
15 significant decision-makers are. We were helping them
16 through phone calls to narrow it down who they thought they
17 should issue -- who they should depose.

18 But we offered them over and over again, we said,
19 please, notice the depositions. Who do you wish to depose?
20 What individual are you looking for in what area of
21 jurisdiction?

22 And instead we got paper. They had agreed at one
23 point not to file a motion to compel. That was the Friday
24 before the Monday where they filed it, because we were giving
25 them the answers they wanted. We filed supplementary

1 answers. We were giving them over the phone the names of
2 individuals.

3 And I'm sorry, I just don't want the Court to
4 think we have been responsible for their inability to file
5 depositions. They have the documents, the 16 phone calls
6 where we've described people. There are only 10 or 12
7 people in this company who make any decisions, Your Honor.
8 If they had taken the deposition even one person on the
9 first day possible, they would have known the entire lay of
10 the land, and we offered that.

11 We wish to go forward. Both the attorneys for
12 Time Warner and Cablevision have said to me they don't want
13 to start on the 25th. That is what is going on. We do. We
14 have made our people available. We have begged them to
15 notice depositions.

16 And I agree with Your Honor, the answers, the
17 written answers were not nearly as complete as their
18 requests called for. But their requests didn't go to who
19 should we depose, and we worked with them over the phone on
20 that. We have done everything possible. And, you know, we
21 have supplemented. We have them right here, Your Honor.

22 We have begged them to notice depositions.

23 JUDGE SIPPEL: I can imagine what would have
24 happened in your response to an interrogatory that asked for
25 who should they depose.

1 MR. SPITZER: Well, Your Honor, we have told them.
2 We have said. In their cover letter Time Warner said we
3 know Peter Price and Behrooz Nourain are obvious candidates.
4 They didn't even notice them.

5 JUDGE SIPPEL: I am not happy. I am saying I am
6 not necessarily happy with everybody else has been doing.
7 But I think that's the item that came to --

8 MR. SPITZER: We gave them --

9 JUDGE SIPPEL: As I was saying, you know, your
10 star was rising on the horizon based on everything else that
11 have ticked all the pluses with Time Warner, and I am still
12 very much impressed by the fact that you all want to get
13 this case --

14 MR. SPITZER: We do.

15 JUDGE SIPPEL: -- on the record on the 24 of June.

16 MR. SPITZER: We do. The 25th.

17 MR. BEGLEITER: Your Honor, if I may.

18 JUDGE SIPPEL: Mr. Begleiter?

19 MR. BEGLEITER: I have the supplemental
20 interrogatories that we served these on the 29th of April.
21 And it does not contain the beginning and ending dates of
22 employment for the employees, which is a lot of effort, and
23 we are going to have that for the Bureau tomorrow.

24 Then in terms of describing who the people are, I
25 am at a loss to understand how much more description we

1 should give.

2 For example, going down the list, we gave them a
3 chart. We said who the technician was. Now, I don't know
4 what more I can say about that. We explained that someone
5 was an executive vice president and chief operating officer.

6 JUDGE SIPPEL: Is this a list that they are going
7 to get tomorrow?

8 MR. BEGLEITER: No, this is -- this is already --

9 MR. SPITZER: April 29th.

10 MR. BEGLEITER: This is in the file, Your Honor.
11 We have already served these. And I don't know how much
12 more -- Your Honor, I have to -- we are now calling in
13 people from New York right now from the company to see if we
14 can get better descriptions.

15 I mean, to be frank, Your Honor, I don't know if
16 we are going to have that tomorrow afternoon, but we are
17 going to try our best.

18 But we have already given descriptions of every
19 single one of the people, and every single consultant. We
20 will supplement with the beginning and ending dates of
21 employment, Your Honor, and everything else they want.

22 JUDGE SIPPEL: Okay, let me just get it clear in
23 my mind because I have no doubt in whatever document I have,
24 I have to focus on is there is a list that I probably have;
25 is that right?

1 MR. BEGLEITER: Yes, Your Honor.

2 JUDGE SIPPEL: And when I was reading through the
3 answers to the interrogatories and measuring it up against
4 the motions to compel, I wasn't seeing this.

5 Should I have been seeing this?

6 MR. BEGLEITER: I think you should have, Your
7 Honor. I am a bit confused on your opinion, Your Honor,
8 because we went to the effort of providing this information.
9 Admitted, Your Honor, the first time we gave them the names
10 of the employees we gave them to them all at once because we
11 were very short on time. This is a small company with a lot
12 of things going on, and we gave it to them.

13 They called up and said, look, break it down,
14 former and current; give us names. Give us descriptions of
15 what they did.

16 And I will pass it up to you. They have this. I
17 have given them descriptions.

18 JUDGE SIPPEL: I do not want to over-argue this
19 issue, but I am listening to you.

20 MR. BEGLEITER: Yes, I don't -- and tomorrow, now,
21 we called them back yesterday, one of our people, and said,
22 look, do you really want more description than this? And
23 they said, yes, we want everything that the Judge asked for.
24 All the other items that we can give, we are going to give.
25 We are not going to argue.

1 I am saying, Your Honor, I don't know what more to
2 do other than to write stories about individuals. And,
3 frankly, they know who the officers are. They know who the
4 employees are. They know who is current and who is former.
5 They don't have the dates. They are going to get that
6 tomorrow. But they have, they have what they need.

7 As a matter of fact, Judge, Time Warner has
8 deposed the president -- the owner of Liberty, has deposed
9 many employees of Liberty in other litigation. This company
10 has no secrets. They know, and Time Warner said in one of
11 their papers that there is two obvious candidates, which are
12 Peter Price and Behrooz Nourain. I don't argue with that.

13 They were in a position a long time ago to say
14 let's pick out some people, and let's start. But, instead,
15 they keep on putting it off and putting it off, and we are
16 now -- we told our people to be ready through the month of
17 May. And they are ready, and we will start as soon as we
18 can next week; maybe even Friday if I can arrange it.

19 But we need to be -- we need not to be distracted
20 by giving more information which is, frankly, I think,
21 useless.

22 JUDGE SIPPEL: Well, it's not useless, but what
23 you are saying is in defense of what my comments were, my
24 observations, my reaction to what I was doing. I was very
25 busy this week. on motions to compel. I had a very busy

1 week. And I don't have a grasp of the record that all the
2 attorneys in this room have, not by a long shot.

3 And you have responded to what my concern was, or
4 what my comments was. I am going to ask Mr. Weber to
5 respond to what you are saying, and then I want to move on.

6 MR. BEGLEITER: Okay.

7 JUDGE SIPPEL: By the way, excuse me, just one
8 more minute. I did fail to write an order or make a note on
9 any of my orders about giving you the extension of time for
10 cause.

11 MR. BEGLEITER: Yes.

12 JUDGE SIPPEL: You have until tomorrow at 4:00 to
13 come up with this additional information.

14 Mr. Weber.

15 MR. WEBER: I would like to comment first on one
16 comment Mr. Begleiter probably repeated four or five times;
17 that he begged us to notice depositions. He never once
18 asked us to note depositions.

19 MR. SPITZER: We have letters, Your Honor, where
20 we said please notice depositions. Did I get down on one
21 knee? I'm sorry, that's -- we are supplicants.

22 MR. WEBER: The supplement to our request for
23 interrogatories did come in on April 26th, which was not
24 that long ago, and we still feel that many of the
25 descriptions of people are very cursory. It doesn't tell us

1 anything they do. One person is just listed as a
2 supervisor. So what are we to know from that type of -- who
3 does he supervise.

4 JUDGE SIPPEL: I am in --

5 MR. WEBER: That doesn't help at all to determine
6 who to depose.

7 JUDGE SIPPEL: I am in your corner on that, and
8 that's why I made them come up with more information.

9 MR. WEBER: One thing that really baffled us was
10 all of a sudden the current employees of Liberty was now
11 just 13 people, where before we had a list of some 150
12 people, while former employees of Liberty is several pages.

13 So, there, again, we had another question. We
14 said what's going on here. They responded to that on the
15 3rd. Again, that was just 11 days ago. It's not like we
16 are -- today the 15th -- 12 days ago. It's not like we are
17 having extensive delays here. Information that was really
18 due to us back on the 8th of April, we are finally beginning
19 to get piecemeal by the 3rd of May. So I don't think we are
20 that far behind schedule here.

21 JUDGE SIPPEL: Well, I don't see it that way.

22 MR. WEBER: In terms of the information we are
23 getting, I don't think we are behind on noting depositions.
24 If we had gotten all of this information on the 8th of
25 April, we would have been ready to notice depositions

1 probably the end of April, like they were called for.

2 JUDGE SIPPEL: Well, again, I don't want to get
3 into the tactics of trial counsel. But you did have two --
4 I mean, you did two of the key people. And under the
5 circumstances of this case, if you haven't come up for a
6 couple of days of depositions so you could fill in the crack
7 with information, I wouldn't have cut you off.

8 Nobody is asking me to do anything. Everybody is
9 telling me why they couldn't do something. That is -- the
10 majority even of the status report is pages and pages of why
11 things weren't done. And what I am trying to do is I am
12 just trying to change that attitude. As I said, this is a
13 brand new day. We still have time to do this, and everybody
14 has done an enormous amount of work.

15 And now I am being told, or reminded by Mr.
16 Begleiter, that there has been a heck of a lot of other
17 litigation going on involving these parties, so there is an
18 element of familiarity that you all have that I don't have..

19 So I don't want to spend time really even
20 appearing to criticize anybody. I just want to let you know
21 where I am coming from because I think you should know where
22 I am coming from.

23 Now, so let me move on. All right, you are going
24 to get what you need. But I also want you -- you have given
25 a list of potential deponents in this list that -- well, you

1 said two things in your status report, Mr. Weber.

2 You said that you are ready to go. You are ready
3 to start deposing.

4 MR. WEBER: Yes, Your Honor.

5 JUDGE SIPPEL: And you have also set out -- yes,
6 here we go. Notice can go out, you say that on page 5. And
7 then you give me a list --

8 MR. BEGLEITER: Twenty-seven.

9 JUDGE SIPPEL: I'm sorry?

10 MR. SPITZER: Twenty-seven employees.

11 JUDGE SIPPEL: Well, okay, 27. I didn't even stop
12 to count them.

13 And then you give me a list like this, and you
14 tell me how long it's going to take each one. I added the
15 hours up, 108 hours of depositions.

16 MR. WEBER: We certainly expect some of those --
17 some of these witnesses can end up being removed after we
18 have received the supplemental information about what they
19 people do.

20 JUDGE SIPPEL: Well, you --

21 MR. BEGLEITER: Your Honor.

22 JUDGE SIPPEL: Wait just a second, I am not
23 finished here. I am saying before we leave here today I am
24 requiring you to remove, I am requiring you to remove at a
25 minimum half of these witnesses. And I want you to then

1 work on, based on further information that you are getting,
2 even whittle that down because these depositions have got to
3 start, and they have got to start immediately.

4 When I say immediately, I am going to leave that
5 up to counsel, but I mean to say that I want those
6 depositions done pronto.

7 And where you start and which one you start with,
8 I don't care, but at least you can get people like Mr. Price
9 on notice, get a date and a place set for him. If you want
10 to then juggle people around because you get more
11 information that's coming in tomorrow afternoon, that's fine
12 too. But this is getting to be the theater of the absurd.
13 That hearing date is not that far away, and you are have a
14 heck of a lot of work to put these cases together.

15 So I have said as much as I can say about this.

16 MR. SPITZER: Your Honor. I'm sorry.

17 JUDGE SIPPEL: Go ahead because I have got a
18 checklist to go through yet.

19 MR. SPITZER: Let me ask for some clarification.

20 Could we ask that Your Honor look at what is
21 Exhibit A and Exhibit B of our supplemental interrogatories,
22 and give us some idea of what additional supplementation is
23 necessary, because, frankly, when we identify somebody as a
24 sales manager or as an account executive or as a technician,
25 I am not sure how much more we can add in terms of

1 descriptive information for the benefit of the Bureau in
2 terms of helping them determine whether or not they wish to
3 depose this information.

4 I don't know what -- if they want to ask us, we
5 are happy to try to work with them. But if we say Jennifer
6 Walden, who is the last name on Exhibit A, is a sales
7 manager, she's a sales manager. I don't know what words I
8 would add to that except that she's seven months pregnant,
9 and if you want to depose her do it quickly.

10 MR. HOLT: Your Honor.

11 JUDGE SIPPEL: This is getting -- yes, sir.

12 MR. HOLT: Perhaps if they were to indicate what
13 those individuals' relationships are to the applications at
14 issue, it might narrow the concerns here, because you can't
15 tell from the statement "technician" whether that individual
16 has any knowledge at all concerning the installation of
17 hard-wired non-common systems, or it doesn't --

18 JUDGE SIPPEL: I heard exactly what you are
19 saying. And this goes to, again, of the idea that, you
20 know, you are going to have to get somebody up front, your
21 first deponent, or your first deponent would be people who
22 know the company, and you are going to have to get a lot of
23 clarification from them. Because even if you do get a
24 complete job description of somebody, you are not going to
25 be able to get a definitive answer until you find out more

1 about -- as I say, I am reacting to this based on what I am
2 seeing on paper. I don't know how much you all know from
3 past experience, you know, but this has got to stop, and
4 it's got to both stop and it's got to start right now.

5 And everything that you are talking about here
6 makes all the sense in the world. You keep talking. But
7 let's not do it on the record here. Let's get moving.

8 I have got a protective order. I have got a
9 protective order that was handed up to me, and that's the
10 first thing that I have on my list. And I am basically
11 ready to sign it. So if somebody wants to bring me the
12 original signature page, it's ready to go.

13 Now, just a minute, though, I have got a couple of
14 qualifiers. That may slow it up a little bit.

15 MR. BEGLEITER: Your Honor, unfortunately, I
16 didn't bring a copy with me.

17 MR. SPITZER: We don't have an original, Your
18 Honor. It was generated at Mr. Begleiter's firm.

19 JUDGE SIPPEL: Well, let me tell you what I want
20 to see done with it.

21 First of all, I want to know -- I want to know who
22 these people are. Again, this is coming at me. And I want
23 to know exactly what the job title is of Barry Rosenbloom,
24 and Robert Jacobs, and Abigail Strauss, Esquire, and all of
25 these people who are listed. I want to know what their

1 position is with the company.

2 Are they vice presidents, general counsel,
3 assistant something or other?

4 MR. SPITZER: They are all Time Warner
5 individuals, Your Honor.

6 JUDGE SIPPEL: Well.

7 MR. SPITZER: None of them is individuals --

8 JUDGE SIPPEL: Well, the same thing with
9 Cablevision: Barbara Kessler and Amy Groveman. I want to
10 know exactly what their title is with the company before I
11 sign off on this thing.

12 And maybe you can tell me who Barry, Barry
13 Rosenbloom, okay, I'll tell you about Barry Rosenbloom. He
14 is not going to see these documents, all right, because he
15 is a marketing man. And Time Warner is not the defendant in
16 this case. Time Warner is the plaintiff for all practical
17 purposes.

18 If you were being sued by somebody on the basis of
19 this or on the basis of an antitrust suit or something like
20 that, I would be very sympathetic to that, but I don't see
21 any reason why he has got to see this information. I am
22 sure that Barry Rosenbloom will be talking to all these
23 other people about the case in general and about the
24 strategy and tactics.

25 Now, he's not cut off from doing that, but he's